



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR)
AN ORDER AUTHORIZING ONFIBER)
CARRIER SERVICES, INC. TO PROVIDE)
AND RESELL LOCAL EXCHANGE AND)
INTRASTATE TOLL TELECOMMUNI-)
CATIONS SERVICES)

ORDER OF APPROVAL

DOCKET NO. TE00040257

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated April 3, 2000, OnFiber Carriers Services, Inc. (Petitioner or OnFiber) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and intrastate toll telecommunications services in the State of New Jersey. Petitioner also provided pro forma financial information via letter dated May 19, 2000 and responded to a Staff questionnaire on June 22, 2000 and to Staff interrogatories on September 18, 2000. Petitioner has requested confidential treatment of the financial information in the May 19, 2000 letter. May 19 letter at 1.

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on October 20, 1999 as OnFiber Carrier Services, Inc. Petition at 2, Exhibit A. Petitioner's principal offices are located at 2730 Sand Hill Road, Suite 150, Menlo Park, California 94025. Petition at 2.

Petitioner submitted copies of its Certificate of Incorporation, a Delaware Certificate of Good Standing and its New Jersey Authority to Operate as a Foreign Corporation. Petition at 2, Exhibit A. Petitioner is currently authorized to provide local exchange and interexchange services in New York and Washington. June 22, 2000 letter at 4. OnFiber has not been denied authority to provide telecommunications services in any state. In addition, OnFiber has no pending civil, criminal or administrative actions against it. June 22, 2000 letter at 4.

Petitioner is considering opting into an existing interconnection agreement with Verizon New Jersey and will notify the Board if and when this occurs. June 22, 2000 letter at 4.

Petitioner's initial plans include providing point-to-point intrastate dedicated transport services. These services will be available to business customers, including internet service providers. Petition at 3. June 22, 2000 letter at 4.

Petitioner requested waivers of rules requiring the maintenance of books and records in New Jersey and according to the Uniform System of Accounts (USOA). Petitioner wishes to maintain its books and records at its principal offices in Menlo Park, California and to keep those books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petitioner

maintains that keeping its books and records in New Jersey and according to USOA would be unduly burdensome. Petitioner has agreed to provide to the Board in New Jersey access to any books and records and reimburse the Board for any expenses incurred in reviewing them. Petition at 6. September 18, 2000 letter at 2.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 4. Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will facilitate economic development in the State of New Jersey. Petition at 4. With regard to its managerial and technical qualifications, OnFiber stated that it possesses the managerial capability and technical qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 4. Petitioner submitted the professional biographies of its key personnel who, according to Petitioner, are well qualified to execute its business plans, having extensive managerial and technical experience in the telecommunications industry. Petition at 4. Exhibit B.

Petitioner stated that it has access to the financial capital necessary to conduct the telecommunications operations of the requested services and has submitted its pro forma financial information as evidence. Petitioner asserted that this financial information is extremely sensitive and strategic information that could be used by competitors to determine market share, revenue and other information damaging to OnFiber in the marketplace. Petitioner also stated that it has used its best efforts to maintain the confidentiality of such information, and due to the sensitive nature of this information, has requested that the Board limit access to such information.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L., 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)]

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21(b)(1) and (3).

Therefore, having reviewed OnFiber's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and intrastate toll telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to reimburse the Board for any expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemption from maintaining its books and records in New Jersey and under the USOA.

With regard to Petitioner's financial information, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 17:27-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the financial information contained in the letter dated May 19, 2000 be kept under seal.

DATED: 12/19/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
BOARD SECRETARY